

EXHIBIT 3

321

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In Re:

BERNARD L. MADOFF INVESTMENT Adv.Pro.No.
SECURITIES LLC, 08-01789 (BRL)
Debtor.

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IRVING H. PICARD, Trustee for the
Liquidation of Bernard L. Madoff
Investment Securities LLC,
Plaintiff, Adv.Pro.No.
09-1182 (BRL)

v.

J. EZRA MERKIN, GABRIEL CAPITAL,
L.P., ARIEL FUND LTD., ASCOT
PARTNERS, L.P., GABRIEL CAPITAL
CORPORATION,

Defendants.

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CONTINUED VIDEOTAPED DEPOSITION OF
J. EZRA MERKIN, as reported by Nancy C. Bendish,
Certified Court Reporter, RMR, CRR, and Notary
Public of the State of New York, at the offices
of Baker Hostetler, 45 Rockefeller Plaza, New
York, New York, on Wednesday, February 25, 2015,
commencing at 9:42 a.m.

1 A. Oh, how much time passed?

2 Q. How much time had passed before
3 you started speaking about BLMIS.

4 A. I don't remember.

5 Q. How often would you speak about
6 BLMIS?

7 A. With Mr. Meyers?

8 Q. Yes.

9 A. Over the years?

10 Q. In the initial time frame. In
11 this late '80s time period.

12 A. I don't remember.

13 Q. Did Mr. Meyers tell you that he
14 conducted due diligence on BLMIS?

15 A. I don't remember the nature of
16 those conversations.

17 Q. Do you have any documentation from
18 those discussions?

19 A. Again, I suppose the answer to the
20 question is yes if the note in the file, if
21 that's what it is, that we referred to, say,
22 five or ten minutes ago, so if it's in fact his,
23 and regardless of whether it's B-E-M-I-S at the
24 top of it or not, if it's there, then that would
25 have been something that he would have sent me

1 around that time.

2 One way of determining that is
3 seeing what the last year on that is because he
4 would have sent me something that was reasonably
5 up to date. So, therefore, I'm not testifying,
6 but speculating, those are two different
7 functions, reasonably contemporaneous with the
8 period you're talking about.

9 Q. After your initial conversations
10 with Mr. Meyers, did you have any discussions
11 with him regarding the performance of your
12 respective BLMIS accounts?

13 A. When you say respective, at that
14 time they weren't respective.

15 Q. After your initial discussions,
16 after, in 1990, did you ever have conversations
17 with Mr. Meyers regarding the performance of
18 your respective BLMIS accounts?

19 A. Yes. Yes.

20 Q. What do you recall from those
21 discussions?

22 A. Well, Leon Meyers and I have had
23 conversations about the investment world going
24 back, let's just say, to '85, '86, '87 and have
25 had one as recently as last week. So I have

1 spent all those years talking to Leon, I suppose
2 possibly twice a day, sometimes twice a week,
3 sometimes twice a month, sometimes twice a
4 quarter. I think my guess would be in all
5 instances more frequently than twice a year. So
6 I'm not going to go to twice a year. And Madoff
7 was a theme of our conversations, surely not
8 every one, but was a constant theme of our
9 conversations. Performance would certainly have
10 been part of it. Most of them focused on
11 visits, telephone calls, understandings, changes
12 in the strategy, possible changes in the
13 strategy, and was he in or was he out, if that
14 was something that we were then talking about.

15 Q. Did you ever have any
16 conversations with Mr. Meyers where you tried to
17 determine how Mr. Madoff chose to enter and exit
18 the market?

19 A. Probably.

20 Q. Did you ever come to any
21 conclusions with Mr. Meyers?

22 A. About what he -- how he --

23 Q. How Mr. Madoff chose to enter and
24 exit the markets.

25 A. You're asking me specifically

1 whether Mr. Meyers and I in a conversation
2 concluded that this is how he did it?

3 Q. Yes.

4 A. I don't remember any specifics of
5 that kind of a -- I just don't remember any
6 specific conversation on that.

7 MR. SONG: We've been talking
8 about an hour, I think now is a good time for a
9 break.

10 MR. STEINER: Sure.

11 THE VIDEOGRAPHER: Off the record,
12 10:42.

13 (Recess taken.)

14 THE VIDEOGRAPHER: Back on 11:07.

15 BY MR. SONG:

16 Q. Mr. Merkin, can I have you turn to
17 Trustee's Exhibit 363, which is your, what we
18 designated yesterday as your Madoff file.

19 A. So we're done with this for the
20 moment?

21 Q. For the moment, yes.

22 A. That's that big thing you gave me
23 yesterday in rubber bands?

24 Q. Yes.

25 A. Keep a semblance of order here.

1 she did.

2 Q. What do you recall that
3 relationship to be?

4 A. I think she had an -- she
5 supervised either a pooled vehicle there or a
6 series of accounts, and was proficient on the
7 subject and knew what she was talking about.

8 Q. Do you recall when you had those
9 discussions with -- let me back up.

10 When do you recall having
11 discussions with Ms. Manzke about BLMIS?

12 A. The specific dates? I don't
13 remember. Early that period of time, perhaps
14 very late '80s, perhaps not quite so late '80s,
15 perhaps '90, around that period of time.

16 Q. Do you know if you had more than
17 one conversation with Ms. Manzke?

18 A. Yes. I mean, yes I -- either in
19 person or on the phone?

20 Q. Yes.

21 A. Including those conversations,
22 yes.

23 Q. Do you have an estimate as to how
24 many times you spoke to her prior to investing
25 with BLMIS?

1 A. Nothing terribly reliable, the
2 estimate.

3 Q. Did Ms. Manzke tell you that she
4 had conducted due diligence on BLMIS?

5 A. I don't remember the specifics of
6 the conversation, but I remember forming an
7 impression that she had been to the office, that
8 she knew Bernie, that she'd had conversations
9 about the strategies.

10 Q. And did Ms. Manzke send you any
11 documentation in the course of your
12 conversations -- or in the course of your due
13 diligence on BLMIS?

14 A. She may have. I don't remember.

15 Q. Did you take any notes of your
16 conversations with Ms. Manzke?

17 A. I don't remember.

18 Q. If you had taken notes regarding
19 your conversations about BLMIS with Ms. Manzke,
20 would you have put them in your Madoff file?

21 A. If I had them, very likely, yes.

22 Q. The next name on the list on page
23 2 is David Gottesman.

24 A. Gottesman, yes.

25 Q. Gottesman. And prior to 1990 did

1 investor or the funds became investors of
2 Mr. Madoff's.

3 Q. And what did you discuss with
4 Mr. Gottesman?

5 A. Mr. Madoff, his personal
6 reputation, the strategy and so forth.

7 Q. Were you aware at that time, prior
8 to 1990, whether Mr. Gottesman had a personal
9 investment with BLMIS or whether it was in a
10 pooled vehicle or investor money?

11 A. I don't remember.

12 Q. And did Mr. Gottesman tell you
13 that he conducted due diligence on BLMIS?

14 A. I don't remember his saying that
15 in those words. I know Mr. Gottesman and he
16 doesn't -- he's a very careful and methodical
17 investor. In his case, one of the impressions I
18 do remember, he had a very high opinion of
19 Bernie Madoff, the person. Thought he was an
20 innovative person, that some of the things he
21 had done in terms of his challenge of on-board
22 versus off-board trading, his willingness to
23 take on the (indiscernible) of the New York
24 Stock Exchange were all things that
25 Mr. Gottesman knew about, was aware of.

1 It was not quite at this time, but
2 Mr. Gottesman's decision to have Mr. Madoff join
3 the university board and become the chairman of
4 their business school board, become at some
5 point the treasurer of the university, a member
6 of the executive committee, were later events,
7 some of them not that much later because that
8 takes place over a series of years, that I think
9 reflected those views.

10 Q. Did Mr. Gottesman ever share with
11 you how much he invested in BLMIS?

12 A. I don't remember.

13 Q. Would the amount of money that
14 Mr. Gottesman placed with BLMIS be of any
15 significance to you?

16 MS. ARCHER: Object to the form.

17 A. I don't remember. At the time
18 Mr. Gottesman had -- was a very, very, very
19 significant investor in Berkshire Hathaway.
20 It's possible that even then I was aware, or I
21 believe is the case which is he was the largest
22 single individual shareholder in Berkshire other
23 than Mr. Buffett. They're institutional
24 investors, but I think at some point I realized
25 he had a larger -- perhaps was a larger investor

1 than anybody -- any other individual.

2 So nothing -- he was never going
3 to invest with some other person. Just for
4 sheer size, of what he might have had with
5 Berkshire and therefore what he had someplace
6 else was not something that I necessarily asked
7 about or remember hearing about or paid that
8 much attention to. Unless it was trivial, but I
9 don't have any memory that it was trivial.

10 Q. What would be a trivial amount in
11 your mind?

12 A. Then?

13 MR. STEINER: Objection to form.

14 Q. Yes.

15 A. I don't know.

16 Q. The next name on the list is
17 Mr. Gedale Horowitz.

18 A. Um-hum.

19 Q. Again, prior to 1990, did you have
20 a relationship with Mr. Horowitz?

21 A. Yes.

22 Q. How would you describe that
23 relationship?

24 A. I knew him. I knew him probably a
25 little bit less well than I knew Mr. Gottesman

1 but not that much less well. He was a -- had
2 been a figure at the Yeshiva University board.
3 I'm not sure he was still on the board but he
4 was the chairman of their investment committee
5 at that time and I had, by then I'm pretty sure,
6 joined the investment committee. I'm not sure I
7 necessarily was then chairing it. Pardon me.
8 Can't quite place the time sequence today.

9 He ran Solomon Brothers' municipal
10 department, municipals department which, when he
11 ran it, until -- the department was closed, was
12 sort of a huge firm within a firm. He was
13 probably one of the leading spokesmen for the
14 muni industry. The nature of the muni industry
15 is such that government relations are very
16 critical because municipals are debt securities
17 issued by government entities, perhaps without
18 exception. They don't qualify for their tax
19 advantages.

20 What I remember from a
21 conversation with him, very specifically at that
22 time, was the extent to which the regulatory
23 world and the congressional world held
24 Mr. Madoff in such high esteem. That would have
25 been something that would have been important to

1 me and he would have been a very critical figure
2 in knowing, because he was constantly traveling
3 among states, and specifically to Congress in
4 Washington, on governmental relations, because
5 they're so important to the muni industry, and
6 because Solomon was such a dominant name in
7 municipals. And he kept saying to me -- he was
8 the person who said to me at that time, Bernie
9 Madoff, a legend on Wall Street. He said, but
10 you -- but possibly even more so, even more than
11 a legend in Congress. Given Bernie's testifying
12 down there and given the extent to which they
13 had looked to him for certain issues in the
14 securities industry.

15 Q. Did you know whether or not
16 Mr. Horowitz had a -- any kind of a personal
17 relationship with Mr. Madoff at that point in
18 time?

19 A. I don't really remember today
20 whether that was the case or not. I have very
21 specific memories of their knowing each other
22 subsequent to that time. In other words, I can
23 tell you about things subsequent to that, but
24 they did very clearly know each other, but I
25 don't remember today whether I knew that then or

1 whether I didn't know that then.

2 Q. And the reason I'm asking is the
3 conversation that you had with Mr. Horowitz
4 regarding Mr. Madoff's reputation, do you know
5 whether that was based on Mr. Horowitz's
6 personal knowledge or whether he also learned
7 that through -- or he was relaying to you
8 Mr. Madoff's reputation from other people?

9 A. The short answer is I don't know.

10 Q. Do you know whether or not
11 Mr. Horowitz had a personal account with BLMIS?

12 A. I don't know whether he had a
13 personal account at that time.

14 Q. Do you know if he ever had a
15 personal account?

16 A. Oh, I thought you asked me that.
17 I don't know for sure.

18 Q. Do you know whether or not
19 Mr. Horowitz was ever personally invested
20 through any vehicle with BLMIS?

21 A. Yes.

22 Q. What vehicle was that?

23 A. Ascot Partners LP.

24 Q. And when did --

25 A. I'm not sure it was him

1 personally. I think it was family trusts, but I
2 would take that to be something that you would
3 want me to answer yes to in your question.

4 Q. Yes. Do you know when
5 Mr. Horowitz began his investments with Ascot
6 Partners?

7 A. Early on in Ascot history and I
8 can't place the exact date or time or year.

9 Q. Did Mr. Horowitz ever tell you
10 that he conducted due diligence on BLMIS?

11 A. I don't remember.

12 Q. And if you hadn't -- if you -- do
13 you have any documentation regarding your
14 discussions and conversations with Mr. Horowitz
15 regarding BLMIS?

16 A. None that comes to mind, but I
17 don't remember.

18 Q. If you had such documentation, you
19 probably would have put it in your BLMIS file?

20 A. Probably.

21 MR. STEINER: Objection to form.

22 A. But depends.

23 Q. Do you recall a meeting between
24 yourself, Mr. Madoff and Mr. Horowitz in
25 February of 2003?

1 A. I recall a meeting. I can't quite
2 place when it was.

3 Q. Do you recall what the purpose of
4 that meeting was?

5 A. I think Mr. Horowitz was
6 interested in -- either had already become an
7 investor in Ascot Partners LP or was
8 contemplating becoming an investor. I would
9 imagine by that time Yeshiva University was an
10 investor. I think he was the chairman of the
11 investment committee when Yeshiva University
12 became an investor. Obviously his views of
13 Mr. Madoff mattered much to that investment.

14 Mr. Gottesman was either on -- was
15 either already the chairman of the board or
16 certainly on the investment committee when that
17 happened, and if that happened at this time,
18 that would have been part of the discussions
19 about Madoff with these two people. I just
20 don't -- you may know, I'm trying to answer the
21 question. If you know when that investment was
22 made, it either fits in your time period or it's
23 a little bit later, but it's not a long time
24 later.

25 Q. Okay. Do you recall anything?

1 was a bit of discussion about SEC chairman but
2 I'm not sure I -- that that is in front of me.
3 That is what I remember their talking about.

4 Q. Did you arrange the meeting
5 between Mr. Horowitz and Mr. Madoff?

6 A. I think so.

7 Q. Do you know why you needed to
8 arrange the meeting if Mr. Horowitz and
9 Mr. Madoff had a personal relationship?

10 A. I think Mr. Horowitz, as either a
11 fiduciary for or as an investor in Ascot
12 Partners LP, thought that that was the way to
13 have the introduction, or have the request made.

14 Q. And did you take any notes from
15 this meeting?

16 A. Again, I'm not sure I was at the
17 meeting or this is my memory of what they told
18 me about the meeting. They meaning mostly
19 Gedale.

20 Q. Other than this one meeting that
21 we were discussing, do you recall any other
22 occasions in which you arranged a meeting
23 between Mr. Horowitz and Mr. Madoff?

24 A. I don't remember if there was a
25 request for another meeting, that didn't happen

1 list is Daniel Hoffert. Am I saying that right?

2 A. Hoffert, I think.

3 Q. Prior to -- again prior to 1990
4 did you have a relationship with Mr. Hoffert?

5 A. Yes.

6 Q. And how would you describe that
7 relationship?

8 A. I knew Mr. Hoffert, he was
9 probably older than I am, and he was someone I
10 knew from our neighborhood and community in New
11 York City when I was growing up. He no longer
12 lived in New York City, probably even then, he
13 lived in Florida.

14 Q. Mr. Merkin, can I ask you not to
15 put your hand to your mouth.

16 A. Okay.

17 Q. Did there come a time in which
18 Mr. Hoffert became an investor with Gabriel?

19 A. Yes. Or some family entity did.

20 Q. And do you recall when you first
21 met Mr. Hoffert to discuss BLMIS?

22 A. I don't remember that, when we met
23 to discuss it. I think he was already in
24 Florida, called me and asked me one or two
25 questions about Madoff. He said he had had -- I

1 think I remember the conversation going
2 something like as follows, because I told him
3 that Gabriel Capital LP -- this is either around
4 the time that he became an investor, or maybe it
5 was earlier. We had discussed the merger
6 arbitrage business and he said to me, you must
7 know somebody else who's in the merger arbitrage
8 business. That's not such an infrequent
9 question. And I said, who'd you have in mind
10 and he said, Bernie Madoff. And I said, I would
11 not think of Bernie Madoff as someone who is in
12 the merger arbitrage business. And he said, no,
13 no, no, not merger arbitrage business.
14 Arbitrage business. He's an arbitrage. "He"
15 meaning Madoff, not Mr. Hoffert. And I thought
16 in some sense that made some sense. And he sent
17 me some form of either a confirmation or perhaps
18 it was a monthly statement to give me some sense
19 of why he called him an arbitrage and what he
20 was doing with him.

21 Q. I'm going you to go back to your
22 Madoff file.

23 A. To the rubber bands?

24 Q. Yes. This will be relatively easy
25 to find.

1 have been an earlier document. That's what I'm
2 trying to get at, that I didn't keep or that I
3 don't have that wasn't in the file, wasn't
4 there. So I'm not sure that this is the
5 document that I was referring to when I said we
6 had the earlier conversations and the earlier
7 document.

8 Q. Okay. Did Mr. Hoffert tell you
9 that he conducted due diligence on BLMIS?

10 A. I don't remember the conversation.

11 Q. And do you know when Mr. Hoffert
12 passed?

13 A. I am guessing around -- the answer
14 is no, I don't. I'm guessing around 2010.

15 Q. Do you know if Mr. Hoffert was
16 asked to testify in any matters regarding your
17 investments in BLMIS?

18 A. I have no idea.

19 Q. If you turn to page 3 of the
20 interrogatory response --

21 A. Okay. Let me put this -- may I
22 seek your advice. Am I putting the rubber bands
23 back on or not?

24 Q. I would not put the rubber bands
25 back on.

1 A. I asked the right person the right
2 question.

3 Q. If you turn to page 3, the first
4 full sentence at the top says you had
5 conversations with customers of BLMIS's market
6 making operations.

7 A. Um-hum.

8 Q. Do you recall who those customers
9 were?

10 A. Well, Fidelity for sure. And I
11 don't remember at the moment who else it might
12 have been. There might have been somebody at
13 Charles Schwab. I just don't remember.

14 Q. Do you recall the particular
15 person you spoke to at Fidelity?

16 A. No.

17 Q. And did Fidelity send you any
18 documentation regarding BLMIS's market making
19 operations?

20 A. I don't think so.

21 Q. Do you know Henry Kaufman?

22 A. I do.

23 Q. How do you know Mr. Kaufman?

24 A. How do I know Mr. Kaufman? I know
25 Mr. Kaufman because he and his wife, for a

1 period of decades, were very active in something
2 that related to a school for music and culture
3 generally on the west side of Manhattan, in a
4 school that my family has had an involvement
5 with for, must be half a century or 40 years,
6 something like that. Meaning my parents,
7 myself, my siblings, my brother I think might
8 still be on the board. So I knew him a little
9 bit from there. And I knew him from going back
10 to his Solomon days a little bit. We also had
11 additional friends in common. One would have
12 been Leon Levy.

13 Q. Did you ever speak to Mr. Kaufman
14 regarding BLMIS?

15 A. Yes.

16 Q. And when were those conversations?

17 A. Can't say I remember specifically
18 when they were.

19 Q. Do you recall whether it was prior
20 to your investments in BLMIS, so prior to 1990,
21 or was it later on?

22 A. I certainly can't recall -- I
23 certainly can't recall with specific precision
24 that they were prior or else I would have
25 included them in the document. So it must have

1 failed some precision test of my own. But it's
2 an older relationship, so it could have well
3 been back then as well.

4 Q. Did you discuss -- do you know
5 whether or not Mr. Kaufman had any investments,
6 either personal or through family entities, with
7 BLMIS?

8 A. I believe he did.

9 Q. And was that the subject of your
10 conversation regarding BLMIS?

11 A. It certainly came up. I mean, it
12 wasn't the only part of it, but it came up. He
13 had a gentleman who worked with him, whose name
14 I can't remember at the moment, and we had the
15 conversations in his office.

16 Q. What was the nature of those
17 conversations?

18 A. Where to invest, how to invest,
19 what kinds of returns he was looking for, what
20 kinds of risk he was willing to take, what kinds
21 of liquidity requirements he had.

22 Q. And did you have any conversations
23 with Mr. Kaufman regarding due diligence on
24 BLMIS?

25 A. I had conversations with him about

1 Mr. Madoff. I can't pinpoint them and say, this
2 is what the due diligence component of it was.

3 Q. Do you have any -- do you have any
4 notes or other documentation regarding your
5 discussions with Mr. Kaufman on BLMIS?

6 A. Not that I remember.

7 Q. And do you know whether or not
8 Mr. Kaufman was ever called to testify in any of
9 the litigations, arbitrations, regarding your
10 investments in BLMIS?

11 A. I don't know.

12 Q. Do you know Norman Levy?

13 A. I think I've been introduced to
14 him once or twice. I don't know him. He -- I
15 know I had perhaps a little bit of a -- he may
16 have been a small owner of the building in which
17 our office is, and we may have been paying him,
18 directly or indirectly, some rent.

19 Q. Do you know whether Mr. Levy had
20 any investments with BLMIS?

21 A. Only from newspaper accounts that
22 appeared subsequent to late 2008.

23 Q. Did you have any discussions
24 with --

25 A. Although, you know what, I can't

1 A. Yes, true.

2 Q. Do you recall whether or not you
3 discussed Mr. Jesselson's investments with BLMIS
4 in your conversations with him?

5 A. I'm sorry? I just didn't -- you
6 just trailed off. Say it again.

7 MR. STEINER: Just to correct one
8 thing, you just said that Mr. Jesselson doesn't
9 appear on page 5, and he certainly does.

10 MR. SONG: Oh, yes.

11 A. Two Ludwigs.

12 Q. Two Ludwigs.

13 Do you recall whether you
14 discussed Mr. Jesselson's investments with BLMIS
15 in your conversations?

16 A. With Mr. Jesselson?

17 Q. With Mr. Jesselson.

18 A. I think I said he talked, when we
19 discussed Mr. Madoff, he talked as an investor
20 of Mr. Madoff would talk. So it was clear to me
21 that he was an investor. Whether it was him
22 personally or the family foundation, not sure it
23 would have made a big difference to me, and I
24 just don't remember which one it was. And it
25 may have been another charity as well.

1 Q. And did Mr. Jesselson tell you
2 that he conducted due diligence on BLMIS?

3 A. In those words, in those many
4 words, I don't remember.

5 Q. And did Mr. Jesselson send you any
6 documents or materials regarding BLMIS?

7 A. I don't think so.

8 Q. Do you know Leon Levy?

9 A. I did.

10 Q. And who is Mr. Levy?

11 A. Mr. Levy was one of the two
12 co-founders and principals at an entity called
13 Odyssey Partners LP. And before that had had a
14 career at Oppenheimer & Company.

15 Q. And did you have a relationship
16 with Mr. Levy?

17 A. Yes.

18 Q. How would you describe that
19 relationship?

20 Again, sir, if you could move your
21 hands away.

22 A. Oh, sorry.

23 We were fairly close. Leon is
24 somebody else I would put on the short list,
25 perhaps not on the scale of Mr. de Picciotto in

1 other customers of Mr. Madoff. Then we
2 discussed Mr. Jesselson, Mr. Gottesman and
3 Mr. Meyers. And then it's other sophisticated
4 investors, including people who served on the
5 Yeshiva University investment committee.

6 A. Um-hum.

7 Q. Could you tell me who those other
8 sophisticated investors are?

9 A. Well, surely Mr. Horowitz. On the
10 YU investment committee, I would probably
11 include in that Morris Smith, Jonathan Kolatch.
12 Don't want to repeat names, so...

13 Those are the names that come to
14 mind at the moment. I'm sure there are more,
15 but those are the ones that I remember at the
16 moment.

17 Q. What do you recall discussing --
18 we've already covered Mr. Horowitz. What do you
19 recall discussing with Mr. Smith?

20 A. He was just present at YU
21 investment committees, either he or an entity
22 that he was related to were limited partners or
23 became limited partners in Ascot Partners LP,
24 probably as well as Gabriel, if I remember
25 correctly. And I think it's possible his

1 mother-in-law became an investor. So it was
2 ongoing conversations.

3 The Ascot investment was a, not
4 necessarily every meeting but was a fairly
5 constant motif at YU investment committee
6 meetings. I don't remember when Morris joined
7 the committee, but he was pretty diligent in
8 attendance, less diligent in attentiveness
9 because he was constantly on his phone. You
10 know, he was constantly emailing throughout the
11 meetings. But he came. Morris worked at my
12 office for a period of years and a lot of the
13 meetings were in my office.

14 So Madoff came up and Morris was a
15 fan. Morris was a fan of Ascot generally.
16 Ascot was, some of that would -- Gedale always
17 asked about, Mr. Gottesman asked about, came up,
18 conversations and so forth. Also as I've
19 previously alluded to Mr. Madoff became
20 something of a figure at Yeshiva University
21 board, chairman of the business school, officer
22 of the board when he became the treasurer, and
23 the executive committee, which was only eight or
24 nine people, included him.

25 Q. Still on page 5, if you go to the

1 Q. You're not aware of a direct
2 investment with BLMIS?

3 A. I'm not aware of one but I would
4 not necessarily be aware of one.

5 Q. And what were the circumstances
6 related to the meeting that you set up between
7 Mr. Bravmann and Mr. Madoff?

8 A. Don't remember.

9 Q. Do you recall what time frame this
10 was in?

11 A. No.

12 Q. Did you attend that meeting?

13 A. I don't remember.

14 Q. Did you have -- did you take any
15 notes of that meeting?

16 A. I don't remember.

17 Q. And do you know if you have any
18 documentation at all evidencing this meeting?

19 A. Did we produce any, may I ask?

20 Q. Would you have had an email, say,
21 with Mr. Bravmann setting up the meeting?

22 A. I might have. I don't know. I
23 would not testify that we didn't but I don't --
24 I don't know that that's the way it would have
25 happened. It may have just been telephone calls

1 name after Christof Reichmuth, so to take those
2 three names together rather than two names
3 together...

4 Q. Sure.

5 A. ...worked.

6 Q. Did there come a time when you set
7 up a meeting between Mr. Reichmuth, Mr. Hackel
8 and Mr. Madoff?

9 A. I set up meetings for Mr. Hackel,
10 I set up meetings for Mr. Reichmuth, I set up
11 meetings for Mr. Erne. I don't know at which
12 meetings the two of them might have overlapped.

13 Q. Did -- I want to start with
14 Mr. Reichmuth. Do you recall when you set up
15 the meeting for Mr. Reichmuth?

16 A. Christof?

17 Q. Yes.

18 A. This would have probably been not
19 that long after Reichmuth & Company was started
20 by his father. So early in the period we're
21 talking about, but I don't remember when.

22 Q. Does the late 1990s sound correct
23 to you?

24 A. That's early in the period we're
25 talking about, so I can't remember exactly when.

1 I would have conjectured 2000 but, you know,
2 it's not a different -- not a completely
3 different answer.

4 Q. Do you recall attending the
5 meeting with Mr. Reichmuth and Mr. Madoff?

6 A. I recall attending meetings at
7 Mr. Madoff's office with various members of the
8 Reichmuth staff. I'm not sure I remember this
9 one specifically.

10 Q. Okay. Do you recall what the
11 purposes were of the -- do you recall what the
12 purposes of the meeting between Mr. Reichmuth
13 and Mr. Madoff were?

14 A. Broadly speaking, Reichmuth &
15 Company had money management clients, of which
16 possibly Mr. Hackel was one and then had a whole
17 series of clients who I didn't know, and they
18 had -- over a period of time were in the process
19 of setting up at least one and probably two what
20 became fairly large fund of funds.

21 In the first one, chronologically,
22 they had a very large position relative to the
23 size of the fund in Ascot Fund Limited.

24 Q. Did you ever tell Mr. Reichmuth
25 that BLMIS only acted as a broker for Ascot

1 Fund?

2 A. No.

3 Q. Do you recall how many meetings
4 you set up between Mr. Reichmuth and Mr. Madoff?
5 Mr. Christof Reichmuth.

6 A. No.

7 Q. Was it more than one?

8 A. Could very well be.

9 Q. Did you ever disclose to
10 Mr. Christof Reichmuth that Ariel had capital
11 invested with BLMIS?

12 A. To Christof specifically?

13 Q. Yes.

14 A. I don't remember a specific
15 conversation with Christof.

16 Q. Okay. Do you recall setting up a
17 meeting for Mr. Patrick Erne and Mr. Madoff in
18 October of 2007?

19 A. Sounds right.

20 Q. Do you know if Mr. Matlin attended
21 that meeting?

22 A. I believe he did.

23 Q. And do you recall anybody else
24 that attended that meeting?

25 A. Me.

1 Q. Anybody else from GCC?

2 A. Don't think so. I don't remember,
3 but -- not that I remember.

4 Q. Why was this meeting arranged?

5 A. I'm sorry?

6 Q. Why was the meeting arranged?

7 A. At some point I guess both Michael
8 and Patrick had asked for a meeting with
9 Mr. Madoff, and -- Patrick was not here that
10 often. He used to swing around about three
11 times to year to visit managers, and so I asked
12 Bernie if it was okay to sort of basically
13 double up and to save wear and tear all around,
14 come to his office with two different investors
15 who had no relation with each other.

16 Q. So was the meeting -- did
17 Mr. Madoff meet with both Mr. Erne and
18 Mr. Matlin simultaneously?

19 A. It was one meeting.

20 Q. It was one meeting. And all four
21 of you were together at the meeting?

22 A. Correct.

23 Q. Do you have any specific
24 recollection of what was discussed?

25 A. I think we started from scratch

1 and went over the, whatever the strategy was at
2 the time, the strategy we've talked about. Lots
3 of questions were asked, questions were
4 answered. I don't think any questions were
5 declined that I can remember. And I think both
6 Patrick and Michael were actually rather
7 thankful for the meeting because I think I
8 remember getting emails saying thank you so much
9 for setting it up and how, if not in this word,
10 in this sense how illuminating it was, or how
11 much light it shed on, you know, things that
12 they had already known but had perhaps a fuller
13 understanding of or a broader understanding of
14 and so forth.

15 Q. And those were emails from both
16 Mr. Erne and Mr. Matlin?

17 A. It might have been one email and
18 one phone call, I'm just not quite sure.

19 Q. Did you take any notes of this
20 meeting?

21 A. I don't remember.

22 Q. Was this the only meeting that you
23 arranged on behalf of Mr. Matlin and Mr. Madoff?

24 A. Might have been. I'm not sure.

25 Q. Do you recall whether or not

1 A. With Mr. Madoff?

2 Q. Yes.

3 A. I'm sorry. What was the question?

4 Q. At the meeting in October of 2007
5 with Mr. Erne, Mr. Matlin and Mr. Madoff, did
6 you discuss Ariel's investment with BLMIS, or
7 was it just an overall discussion on Mr.
8 Madoff's strategy?

9 A. It was surely the latter, okay,
10 about the -- yes, it was a discussion of the
11 strategy. They were there to meet Mr. Madoff,
12 not to meet me. If I remember correctly, I
13 think I had a meeting with one of them
14 immediately before or immediately after, but it
15 was on the same day. I think they met in my
16 office and -- we met in my office and then we
17 walked over to Third Avenue immediately
18 following the meeting with me and then had the
19 meeting with Bernie. That would probably have
20 been with Patrick. And then had the meeting
21 with Bernie.

22 Q. And prior to December of 2008, did
23 you ever tell Mr. Erne that Ariel was invested
24 with BLMIS?

25 A. I don't remember a specific

1 vaguest memory that she either was a compliance
2 person or perhaps a legal person, but that
3 doesn't mean she didn't function within the risk
4 review group.

5 Q. All right.

6 A. If people who went on a due
7 diligence visit, to your way of asking
8 questions, by definition are part of a risk
9 review, then maybe they are. That depends how
10 you think about the relationship between due
11 diligence and risk. Then I would say she
12 probably was part of that because she went on
13 due diligence visits.

14 Q. Okay.

15 A. But I don't know what her --

16 Q. You don't know what her job title
17 is?

18 A. Correct.

19 Q. Or what her role is at UBP?

20 A. I certainly don't know what her
21 job title is. I know enough about her role to
22 say -- and it's not very much -- to say that she
23 was part of a due diligence review.

24 Q. Do you recall setting -- arranging
25 a meeting between Mr. Igolnikov and Mr. Madoff

1 in early 2004?

2 A. Not specifically, no.

3 Q. Let me get, Oleg, 133 and 134.

4 (Exhibits Trustee 370 and Trustee
5 371 marked for identification.)

6 Q. Mr. Merkin, the court reporter has
7 handed you what's been marked as Trustee's
8 Exhibit 370, which is UBPAMMERKIN00000004.

9 A. Um-hum.

10 Q. And Trustee Exhibit 371, which is
11 Bates number GCC-P 0152946. And we're going to
12 start with 370.

13 A. Okay.

14 Q. Do you recognize Trustee's 370?

15 A. Well, this looks like it's an
16 email from Roman Igolnikov to me in February of
17 2004. Assuming that his email system spells his
18 name correctly, it looks like we did not spell
19 it correctly on page 5, first full paragraph.

20 Q. And what is Mr. Igolnikov -- what
21 is the subject of this email?

22 A. I assume it starts from the
23 bottom?

24 Q. Yes.

25 A. So he's asking me, consistent with

1 It sounds like he may otherwise have had some
2 difficulty in doing so from the third sentence,
3 and was appreciative of the access and of the
4 meeting.

5 Q. To your understanding was this the
6 first time Mr. Igolnikov met with Mr. Madoff?

7 A. I don't remember, if I knew.

8 Q. Do you recall -- did you attend
9 that meeting between Mr. Igolnikov and
10 Mr. Madoff?

11 A. I don't remember.

12 Q. Did Mr. Igolnikov ask to bring
13 anyone with him to the meeting?

14 A. I don't remember.

15 Q. Did you ever tell Mr. Igolnikov
16 that BLMIS does not take visitors?

17 A. Did I ever tell that to Roman?

18 Q. Yes.

19 A. While setting up a meeting?

20 Q. Yes.

21 A. No.

22 Q. Did you tell Mr. Igolnikov that it
23 was a big deal for you to take him to see
24 Mr. Madoff?

25 A. No. Certainly not that I

1 not they knew of the Madoff involvement in
2 Ascot, and whether they knew about the Madoff
3 involvement in Ariel.

4 Q. Yes.

5 A. If they knew of the Madoff
6 involvement in Ascot, in my opinion, is a fact.
7 I think it's more likely than not that they knew
8 of the involvement in Ariel. My level of
9 conviction there is not as high as it was or is
10 on the Ascot piece, and we did not challenge
11 them on Ariel. We challenged them only on Ascot
12 for that reason.

13 Q. And you're referring to some sort
14 of litigation between you and Reichmuth &
15 Company?

16 A. Yes.

17 Q. Mr. Merkin, do you recall
18 yesterday you referred to an accounting firm
19 called Avellino & Bienes?

20 A. Yes.

21 Q. And Avellino & Bienes was the
22 subject of several news articles that you kept
23 in your Madoff file, correct?

24 A. I don't know how many, but yes.

25 Q. Other than those articles, did you

1 have any other source of information regarding
2 Avellino & Bienes?

3 A. Other than a discussion with
4 Mr. Madoff about them, no.

5 Q. And what was --

6 A. In addition to that I'm saying, in
7 addition to the articles I had conversations
8 with Bernie about them, but that was it.

9 Q. And what was your discussions with
10 Mr. Madoff about it?

11 A. He kind of said, yeah, it was me
12 and them. I didn't know anything about Avellino
13 & Bienes until I read the first of the articles
14 that I read, which was the Wall Street Journal
15 article, and it was already over.

16 Q. And did you and Mr. Madoff discuss
17 the subsequent SEC investigation of Avellino &
18 Bienes?

19 A. I don't know if it was subsequent.
20 That is, I have to go back and read the Journal
21 article and see whether that was written only
22 after the SEC investigation was over. I doubt
23 it, but I just don't remember the sequence.

24 Q. Take out the word "subsequent."
25 Did you have a conversation with Mr. Madoff

1 regarding an SEC investigation into Avellino &
2 Bienes?

3 A. There's a reference to the SEC
4 investigation in that article. And Richard
5 Walker, who was the regional administrator in
6 New York at the SEC at that time, is quoted. I
7 don't remember exactly what he says in that
8 quote, because I don't remember the article that
9 well, but I believe he is named or maybe he's
10 just referred to and there's not a quote in
11 quotations. I just don't remember it that
12 clearly.

13 But we discussed the article and
14 we may have discussed Richard Walker, in which
15 case the answer to your question did we discuss
16 anything about the SEC would have been yes. If
17 we didn't bring up Richard Walker, I don't
18 remember otherwise a discussion about the SEC.

19 Q. How often would you talk about the
20 SEC with Mr. Madoff?

21 A. I don't know.

22 Q. In your 10 to 15 conversations per
23 year, do you recall whether you had a
24 conversation once or twice per year or was it
25 one time in your entire, the entire span of your